DETAILED ACTION

The following is a Final Office action in response to communications received on 08/02/2011. Claims 2, 18, 30, 31, 39, 41, 47, 48, 55, and 56 have been cancelled. Therefore, Claims 1, 3-17, 19-29, 32-38, 40, 42-46, and 49-54 are currently pending and addressed below.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2-5, 8, 11-14, 16, 17, 19-26, 28, 29, 34-38, 40, 42-46, 49-54 are rejected under 35 U.S.C. 102(b) as being anticipated by Engh et al. 6,482,209.

3. Engh discloses a device for resurfacing the femoral condyles and patellofemoral groove having condylar portions 136 and trochlear portion 134 wherein the condylar portions are disposed on each side of the trochlear portion (Figs 41, 42) (Claims 1, 26, 28, 51-54). Engh discloses a device having convex curved portion that may be flexible to provide an optimum fit along the femoral condyles, as such, these convex curves would be fully capable to at least *substantially replicate* a portion of an uncut articular surface. The device is configured to resurface the femoral condyles and the trochlea to

restore the normal kinematics of the knee (col. 5, ll. 1-5) (Claims 22-25, 40, 42, 50. Engh also contemplates that the implant may be made in various sizes based on patient needs (col. 14, 62-65) (Claim 19), therefore the implant is fully capable of having the thickness of a cartilage defect of a patient, since this limitation does not denote a specific thickness (Claims 3-7, 32, 33, 36-38, 42-46). The implant may be made of a metal or metal alloy and a polymer (col. 15, ll. 1-10) (Claims 8, 11, 34). The implant may also have protrusions on the bone-facing surface (col. 14, ll. 55-57) (Claims 12-14, 35). Furthermore, Engh discloses a tibial component that may be used to resurface the tibial plateau surface (Fig. 40, col. 13, l.62 – col. 14, l.19) (Claims 29, 49).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 6, 7, 9, 10, 32, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable Engh et al. 6,482,209 over in view of Fell 2003/0060882.

6. Engh teaches the invention as claimed and as discussed above. However, Engh does not teach an offset thickness or biologically active surfaces.

Fell discloses a metal knee prosthesis (paragraph 74) with biologically active surfaces (paragraph 74) and an offset defined by a ratio (paragraph 28, fig. 3).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Engh with the offset of Fell in order to restore normal joint alignment without requiring any bone resection as taught by Fell (paragraph 17).

7. Claims 15 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engh et al. 6,482,209 in view of Rolston 2004/016730.

8. Engh teaches the invention as claimed and as discussed above. However, Engh does not disclose a second implant component that covers a portion of the patellar surface.

Rolston discloses a second component 58 that has a first surface that engages the femur mating surface of the patella and a second surface that engages the patella (fig. 6).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Engh with the patellar implant of Rolston in order to remedy a patella that is also diseased as taught by Rolston (paragraph 5).

Response to Arguments

9. Applicant's arguments filed 08/02/2011 have been fully considered but they are not persuasive. The Applicant argues that Engh does not disclose a curved portion that replicates a patient-specific curve, and the Applicant also argues that Engh does not disclose a device having a planar surface portion of one of the bone-facing implant surfaces. The Examiner respectfully disagrees. As noted above, Engh discloses a device having convex curved portion that may be flexible to provide an optimum fit

along the femoral condyles, as such, these convex curves would be fully capable to at least *substantially replicate* a *portion* of an uncut articular surface, as broadly claimed. The device of Engh also has several planar surfaces along the bone facing surface itself. At least surface that is directly pointed to from line 134 of the trochlear portion (Fig. 41) and the distal edge of the femoral bone facing surface (Fig. 43) are planar.

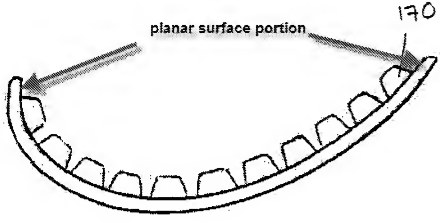

Figure 43

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON-DENNIS STEWART whose telephone number is (571)270-3080. The examiner can normally be reached on M-F (alt Fridays off) 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Sweet can be reached on (571)272-4761. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If there are any inquiries that are not being addressed by first contacting the Examiner or the Supervisor, you may send an email inquiry to: TC3700_Workgroup_D_Inquiries@uspto.gov.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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